jured the company is not liable. *Toledo, etc., R. Co.* v. *Daniels,* 21 Ind. 256; *Indianapolis, etc., R.* Co. v. *Truitt,* 24 Ind. 162. Where an animal crossed over a fence on account of snow drifted against it and was injured, the railway company was not liable as it was under no duty to remove the snow. *Patten* v. *Chicago, etc., R. Co.,* 75 Iowa 459, 39 N. W. 708. It seems the same rule should apply to cattle guards.

SALES—CONDITIONAL SALES—ACCEPTANCE OF COLLATERAL SECURITY DEFEATING TITLE.— A seller retaining title under a conditional sale subsequently took the personal security of a third person for the purchase price. *Held,* the acceptance of collateral security does not divest the seller's title. *McDonald Automobile Co.* v. *Bicknell* (Tenn.), 167 S. W. 108.

This doctrine is supported by the weight of authority. *Cherry* v. *Arthur,* 5 Wash. 787, 32 Pac. 744; *Standard Steam Laundry Co.* v. *Dole,* 22 Utah 311, 61 Pac. 1103; *Kimball* v. *Costa,* 76 Vt. 289, 56 Atl. 1009, 104 Am. St. Rep. 937; *Monitor Drill Co.* v. *Mercer* (C. C. A.), 163 Fed. 943, 20 L. R. A. (N. S.) 1065. The only case *contra,* states the rule that collateral security on other property taken at the time of the sale is inconsistent with the retention of title; the latter of itself being absolute security. *Silver Bow Min., etc., Co.* v. *Lowry,* 6 Mont. 288, 12 Pac. 652. In an unsatisfactory case it was held that the giving of a new note by the buyer to cover the balance due on preceding notes divested the seller's title, but it seemed to be based merely on a matter of evidence as to the intention of the parties. *Edgewood Distilling Co.* v. *Shannon,* 60 Ark. 133, 29 S. W. 147. *Contra, National Cash Register Co.* v. *Riley,* 7 Pen. (Del.) 355, 74 Atl. 362. The rule laid down in the principal case applies with equal force to a conditional sale of real estate. *Anthony* v. *Smith,* 9 Humph. (Tenn.) 508; *Fogg* v. *Rogers,* 2 Cold. (Tenn.) 290.

More radical than the decision in the instant case are numerous holdings to the effect that the execution of a chattel mortgage on the identical property sold, and its acceptance by the seller, either contemporaneously or subsequently, does not convert the conditional sale into an absolute sale. *Bierce* v. *Hutchins,* 205 U. S. 340; *Greenwald* v. *Tinsley,* 90 Miss. 38, 42 South. 89; *First Nat. Bank of Corning* v. *Reid,* 122 Iowa 280, 98 N. W. 107. It is difficult to see on what legal principle it can be maintained that the retention of title by a seller is consistent with the accepance of a chattel mortgage by the buyer on the property sold as additional security for the purchase price. The power to execute a chattel mortgage on property necessarily implies title in the person giving the mortgage. *Cornish* v. *Frees,* 74 Wis. 490, 43 N. W. 507. In a conditional sale the seller retains the title. The execution of a mortgage by the buyer, on the property conditionally sold, and its acceptance by the seller, should, it would seem, *ipso facto* convert the conditional sale into an absolute one, either on the ground that the condition is satisfied or that there is a waiver of title by the seller. *Thornton* v. *Findley,* 97 Ark. 432, 134 S. W. 627, 33 L. R. A. (N. S.) 491; *American Soda Fountain Co.* v. *Blue,* 146 Ala. 682, 40 South. 218. The seeming con-

flict arises not so much from a direct conflict in the holdings of the cases, as from a failure to make a distinction between collateral security taken on the property conditionally sold and that taken on other property of the buyer. Further, no distinction has been drawn between collateral security afforded by a third person and that afforded by property of the buyer.

RESTRAINT OF TRADE—SHERMAN ANTI-TRUST ACT—The International Harvester Company was a consolidation of five companies, which collectively produced about eighty-five *per centum* of the harvestering machinery sold in this country. The companies previously had been prosperous and keen competitors. The combination was effected by making one of the companies, of which the Harvester Company owned all the stock, with changed name, the exclusive selling agent for all the products of the several plants. No over capitalization was shown and the methods of conducting the business were in general fair to competitors. The Harvester Company purchased all of the stock of another large harvester company, permitting it, however, to continue doing business and advertising as an independent and competing firm. The government sought to dissolve the combination. *Held*, under §§ 1 and 2 of the Sherman Anti-Trust Act the International Harvester Company is organized to eliminate competition; it it *ab initio* a combination in restraint of interstate commerce; and it is an attempt to create a monopoly in harvesting machinery, and although the restraint and monopoly had not been attempted to any harmful extent it is potential and is prohibited by the act. *U. S.* v. *International Harvester Co.*, 214 Fed. 987. See NOTES, p. 140.

SPECIFIC PERFORMANCE—RELIEF FROM DECREE—EFFECT OF VENDEE'S FAILURE TO PAY.—The defendant contracted to sell the plaintiff certain lands. Afterwards, upon the defendant's refusal to convey the property, the plaintiff was granted a decree directing a conveyance on the payment of the purchase money. Then, although the defendant stood ready to convey in accordance with the decree, the plaintiff paid nothing; whereupon the defendant made motion that the decree be rescinded to remove the cloud resting upon the title to the property. *Held*, the plaintiff is entitled to the relief asked. *Rosenstein* v. *Burr* (N. J. Ch.), 90 Atl. 1037.

Suits of this nature, at least where the vendee was plaintiff in the suit for specific performance, are of infrequent occurrence; partly because performance would not be sought where there was an inability to pay the purchase price, and because of the rule in some jurisdictions requiring actual payment of it to the court before granting the vendee's suit. *Jones* v. *Alley*, 4 Greene (Ia.) 181. A suit for the rescission of the decree has never been previously brought before the American courts. See *Rosenstein* v. *Burr*, *supra*. But it has been held that where the vendee, after obtaining a decree of specific performance, fails to take title to the property in accordance with the decree; either